IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 16TH NOVEMBER 2006 / 25TH KARTHIKA 1928

CRL.A.No.83 of 2004(C)

S.C.NO.450/2001 OF THE COURT OF THE ADDITIONAL SESSIONS JUDGE, THODUPUZHA.

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APPELLANT: (ACCUSED):-

RAVEENDRAN NAIR @ OMANAKUTTAN,
S/O. SIVARAMAN NAIR, ALENCHERIL NAIR,
ALENCHERIL VEEDU, BANGLADESH COLONY BHAGOM,
BALAN PILLA CITY, RAMAKKALMEDU.

BY ADV.SRI.S.SACHITHANANDA PAI

RESPONDENT: (COMPLAINANT):-

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

V.K.Bali,C.J. & S.Siri Jagan,J.

Crl.A.No.83 of 2004

Dated, this the 16th day of November, 2006

JUDGMENT

V.K.Bali,C.J.

Raveendran Nair @ Omanakuttan, the appellant herein, for intentionally causing death of Dileep, has been held guilty under Section 302 of Indian Penal Code and sentenced to undergo rigorous imprisonment for life, vide order dated 27th September, 2003 passed by the Additional Sessions Judge, Thodupuzha. The only question that needs determination in the present appeal is as to whether the offence committed by the appellant would fall under Section 302 or Section 304 Part I or II of Indian Penal Code.

2. The brief facts that need necessary mention for adjudicating the only question posed above would reveal that the incidents leading to the death of Dileep occurred on 11.3.2000 at 9.30 p.m. The F.I.R. was lodged by Assanar, P.W.9, on 12.3.2000 at 8.40 a.m. It was recorded by Bijo Alexander, Sub Inspector of

Police (P.W.15). While unfolding the cause of death of Dileep, Hassanar stated that the appellant is the husband of the sister of deceased Dileep. Dileep was his friend and the appellant had enmity towards Dileep and with an intention to kill the deceased by stabbing, appellant stabbed the deceased at his chest and back 3 – 4 times at about 9.30 p.m. yesterday (11.03.2000) in front of the Barbershop of Vinod at Balanpilla City, Karunapuram Village, Ramakkalmedu. Dileep was then taken to Medical Trust Hospital, Nedumkandam for treatment, but died on the way.

3. In its endeavour to bring home the offence charged, prosecution examined Dr.Reji Jose, P.W.7, who stated that on 12/3/2000 at 1.45 p.m. he had conducted post mortem examination on the dead body of Dileep. The doctor found the following ante-mortem injuries on his dead body:

> "1. Elliptical incised injury over the upper part of the scapular region 8 cm below the midpoint of Rt.Clavicle and 8 cms. from midline, 1.7 cm in length 0.9 cm in width and bone deep.
>
> 2. Almost elliptical incised injury 19 cm below the wound No.1 and 5 cm from midline 3 cm long 1.2 wide

cutting the muscle and entering the thoracic cavity.

3. Incised wound 6 cm below the 2nd wound 10 cm from midline 2 cm long 1 cm wide. It entered the abdomen cavity.

4. Incised elliptical injury horizontally placed 8 cms from the Rt.nipple and was the sternum 2.8 cm long 1 cm wide and bone deep. Abrasion extending from the Rt. Lateral end of the wound extending upto 3 cm above Rt. Nipple. Opening the wound revealed that this wound cut the sternum over a length of 2.5 cm extending to the junction of 6th Rt costal Cartilage. There was a wounded injury of the pericardium. Periodical cavity was filled with blood and blood clots 0.9 cm long injury over the Rt. Ventricular muscle.

5. Injury No.2 entered the pleural cavity, which contained blood. There was a 1.5 cm long injury over the posterior part of lowerlobe of the Rt. Lung. This injury corresponded to injury No.2.

6. Corresponding to injury No.3 there was a 1 cm long injury over the posterior interior part of the Rt.lobe of the liver"

In the opinion of the doctor, the cause of death was haemorrhage shock due to injury to the vital organs. The doctor proved the certificate, Exhibit P6, issued by him. He further stated that M.O.2 knife could result into injuries mentioned by him in Exhibit P6.

4. Hassanar, the first informant, while giving narration of the incident as witnessed by him, stated that it was 2-3 years ago at 9.00 at the night he had kept his jeep in his residence, which is 150 feet away from the city. Thereafter he went to the city and on the way, he heard a sound that 'my brother is stabbed, he may be saved'. It was near from the Barbershop, which was 30 feet away from where he stood. He was near the provision shop of Pappachan. He could see the Barbershop from where he stood. He went to the place where he heard the sound and he saw the appellant coming towards him and told him that he had stabbed 3-4 times and thrown the knife there and he was in search of the knife. The knife cover was with him. Saying that, the appellant went to eastern side. Dileep's sister Prasanna and her daughter were standing in the stadium little away. By that time, Dileep was taken to hospital. He went to the Medical Trust

Hospital, Nedumkandam and saw Dileep. Dileep was dead. He proved the F.I.R. lodged by him as Exhibit P9. Satheesan, brother of Dileep, had told him that his brother was stabbed. Inasmuch as, this witness had not seen the actual occurrence and the appellant giving knife blows to deceased Dileep and also for the reason that Rajendra Prasad - brother of the appellant - (P.W.10) and Satheesan - brother of the deceased - (P.W.11) had witnessed the occurrence, there would be no need to further deal with the evidence of witness Hassanar (P.W.9).

5. Rajendra prasad, the brother of the appellant, stated that an altercation had taken place between him and one Assi in front of the Barbershop owned by Vinod. Interfering in the altercation, the appellant directed him to go home. Hearing this, people surrounded and the appellant slapped him directing to go home. Dileep did not like it and a scuffle took place between the appellant and the deceased. Then, Girish, the nephew of Dileep tried to separate the appellant and the deceased and at that time Dileep told that he was stabbed. He along with Satheesan and Girish had taken Dileep to Arpana Hospital, Thookumpalam and then to Medical Trust Hospital, Nedumkandam. He then stated

that there was no quarrel between the appellant and his wife and there was altercation between the appellant and Dileep on earlier occasion regarding family matters. To the question as to whether harassment of his wife was the problem, he stated that he does not remember. When questioned as to whether he had seen the appellant stabbing Dileep, he answered in the negative. On his so answering, the Public Prosecutor sought permission of the Court to cross-examine him. There would be no need to further give details of the deposition made by him as the learned counsel representing the appellant says that the best witness examined by the prosecution in this case would be none other than the real brother of deceased Dileep. Even on the basis of the statement made by Satheesan (P.W.11), the brother of deceased Dileep, the offence committed by the appellant would not go beyond Part II of Section 304 of IPC. The counsel for the appellant, it is, thus, clear, wishes to argue the matter on the basis of the statement by Satheesan (P.W.11) and that being so, it would be relevant to make a mention of the sequence of events as narrated by Satheesan leading to death of Dileep. Surely, for the prosecution there cannot be a better witness than Satheesan, the

real brother of the deceased. While appearing as P.W.11, Satheesan stated that Dileep was his brother, whereas the appellant was the husband of his sister. He had seen the incident in which Dileep died and it was on 11.3.2000 after 9.00 p.m. It was on the side of teashop of Salim at Balanpilla City. On the opposite side there was Vinod's Pranavam Barbershop. It was in the City. He was a loading worker there. On hearing sound from near the shop of Salim, he rushed there and then saw altercation and scuffling between the appellant and P.W.10. Then he tried to separate them. It was then that Dileep came there. He caught P.W.10, whereas Dileep caught the appellant. The appellant used force. Dileep then slapped the appellant in his face and pushed him near the Barbershop. He stood in the roadside catching P.W.10. Then the appellant took a knife from his waist and stabbed Dileep in his back. Dileep said that he was stabbed. Then the appellant stabbed in his chest. Seeing this, leaving Assi, he went there. Soman, Girish and Purushotham (Mani) also came there. Dileep then told that he was stabbed. He also, in a loud voice, told that Dileep was stabbed and he has to be saved. Then somebody brought a jeep and Dileep was taken to Arpana

Hospital and then to Medical Trust Hospital, Nedumkandam, where he died. To the question as to whether there was enmity between Dileep and the appellant, the witness stated that the appellant was in the habit of harassing his wife daily and about one month before the date of occurrence, the appellant had beaten his wife and on the above issue, the appellant and Dileep quarrelled. It is further stated that the said enmity and grudge in interfering with the altercation between him and his brother was the reason for stabbing. Soman, P.W.12, another eye witness of the occurrence, also stated that there was an altercation between the appellant and P.W.10. P.W.11 and Dileep came there and caught them. Dileep caught the appellant and P.W.11 caught P.W.10. Dileep slapped the appellant and then the appellant stabbed Dileep on his back for 2-3 times. Jayaprasanna, examined as P.W.13, the sister of Dileep, stated that her daughter Nisha told her that Satheesan was telling that Dileep was stabbed by the appellant. Thomas (P.W.14) stated that he had heard that Dileep died out of stabbing. This witness was running a shop by name 'St.Thomas Stores' located close to the place of occurrence. K.M.Mathew, the Investigating Officer

examined as P.W.16, deposed with regard to the steps he had taken while investigating the case. In the context of limited controversy raised in the present appeal, there would be no need to give further details of the prosecution evidence.

6. We have heard Mr.S.Sachithananda Pai, representing the appellant and Mr.P.Ravindra Babu, learned Public Prosecutor representing the State. There cannot be any dispute that the prosecution would not have a better witness to support its case than Satheesan, brother of deceased, who was examined as P.W.11. No doubt, it is true that the appellant is also related to him as his sister was married to him. Once, however, his sister was troubled by the appellant, he may be more inclined in favour of his brother. Be that as it may, learned Public Prosecutor cannot deny that Satheesan, P.W.11, would be the star witness for the prosecution. The genesis of the occurrence is in an altercation and scuffle between the appellant and P.W.10, who is the brother of the appellant. At the time when altercation and scuffle was going on between the appellant and P.W.10, the deceased had not even arrived at the scene of occurrence. Satheesan (P.W.11) tried to separate the appellant

and P.W.10. It is at that time and stage, Dileep entered the scene of occurrence. At that time, Satheesan caught hold of P.W.10, whereas Dileep, who had arrived at that time, caught hold of the appellant. It is, thus, clear that when Dileep had caught hold of the appellant and the appellant used some force, he slapped the appellant on his face and pushed him near the Barbershop. The appellant then took out a knife from his waist and stabbed Dileep on his back and Dileep turned by saying that he was stabbed. From the narration of the facts given by Satheesan (PW.11), it is crystal clear that there was no premeditation and it was indeed a sudden fight and it is in the heat of passion upon the sudden quarrel that the appellant had given knife blow injuries. In the facts and circumstances of the case, we are of the view that the present case would fall under Exception 4 to Section 300 of Indian Penal Code, which reads as follows:-

> "***Exception 4***.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.
>
> ***Explanation***.- It is immaterial in such cases

> which party offers the provocation or commits the first assault".

The act committed by the appellant indeed is culpable homicide, but not amounting to murder. Mr.P.Ravindra Babu, learned Public Prosecutor faintly urged that the appellant had taken undue advantage or had acted in a cruel manner, which fact could be proved by the appellant giving repeated knife blows to the deceased and, therefore, the case in hand would not attract Exception 4 to Section 300 of Indian Penal Code. We, however, find no substance in the contention of the learned Public Prosecutor as noted above. It is settled proposition of law that repetition of injury would not make Exception 4 to Section 300 inapplicable. It has been held by the Honourable Supreme Court in **Surinder Kumar** v. **Union of India** [(1989) 2 SCC 217] that once when a case is covered under Exception 4 to Section 300 of IPC, the number of wounds caused would not be a decisive factor to alter its effect. Four requirements must be satisfied to attract Exception 4 to Section 300 IPC. They are - (i) there should be a sudden fight, (ii) there was no premeditation, (iii) the act was done in a heat of passion and (iv) the assailant/s had not taken

any undue advantage or acted in a cruel manner. Two Division Bench decisions of this Court in **Kunhan and another** v. **State of Kerala** (Crl.A.No.518 of 2004) decided on 30th March, 2006 and **Simesh** v. **State of Kerala** (Crl.A.No.33 of 2004) decided on 6th October, 2006, following the dictum of the Supreme Court in **Surinder Kumar's case** (supra), have held likewise.

7. Dr.Reji Jose (P.W.7) has made a mention of six injuries on the dead body of deceased. Injuries 5 and 6, it appears, are because of the effect of injuries 2 and 3. It is not the prosecution case that Dileep was caused more than three knife blows. For that reason as well, injuries 5 and 6 would be the result of injuries 2 and 3. Injuries 1 and 4 are serious and on the vital part of the body. The contention of the learned counsel for the appellant that the case of the appellant would be covered under Section 304 Part II of I.P.C. cannot be accepted considering the nature of injuries as mentioned above which, in the opinion of the doctor, were sufficient in the ordinary course of nature to cause death. We are of the view that the case would be covered under Section 304 Part I of I.P.C.

The upshot of the discussions as made above results in

partial success of the appeal. The appellant is found guilty under Section 304 Part I. Interest of justice would be served if he is sentenced to undergo rigorous imprisonment for seven years. The appeal is partly allowed and to the extent as mentioned above, the order dated 27th September, 2003 passed by the Additional Sessions Judge, Thodupuzha is modified.

Sd/-
V.K.Bali
Chief Justice

Sd/-
S.Siri Jagan
Judge

vku/-

- true copy -

P.A. to Judge.